

A number of these 83 judgeships are not even needed. For instance, in the Judiciary Committee we have already made the case that the 12th seat in the D.C. Circuit should not be filled. We have had chief judges in other courts testify that they don't need seats in their courts filled. This further undermines the argument that there is some kind of a vacancy crisis. As a matter of fact, three of these vacant seats were created in 1990 and have never been filled. If they were so necessary, why didn't a Democrat-controlled Senate fill them in the four years it had to do it? I think the answer is self-explanatory, Mr. President. Those who charge that Republicans are practicing partisan politics against Clinton nominees are the same crowd that brought partisan politics to an art form against Reagan and Bush nominees.

Mr. President, I intend to speak on this matter more as we continue to consider nominees and debate the issue of judicial vacancies further. I urge my colleagues on this side of the isle to do the same.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KEMPTHORNE). Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate now proceed to executive session to consider the nomination of Frederica Massiah-Jackson.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HATCH. Let me also note for the record, there is no objection on the part of the minority, at least I have been informed there is no objection, to proceeding with this debate at this time.

NOMINATION OF FREDERICA A. MASSIAH-JACKSON, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. The clerk will report the nomination.

The legislative clerk read the nomination of Frederica A. Massiah-Jackson, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania.

Mr. HATCH. Mr. President, I rise today to express my strong concerns with respect to President Clinton's nominee to be a U.S. district court judge for the Eastern District of Pennsylvania—Judge Frederica Massiah-Jackson. I voted for this nominee in committee, but on the basis of information that has been presented to the

committee since Judge Massiah-Jackson's hearing, I now have serious reservations about her nomination.

Judge Massiah-Jackson, who currently serves as a State court trial judge in Philadelphia, was nominated by President Clinton on July 31, 1997, to serve in the Eastern District of Pennsylvania. The Judiciary Committee received her completed paperwork on August 15 and began processing her nomination around mid-September. The committee began, in bipartisan fashion, to review what available information there was on her background, her qualifications, and her experience.

The committee's assessment of that information was directed from the outset to serious allegations that were leveled against Judge Massiah-Jackson. In particular, the committee's bipartisan investigative team followed up on allegations that Judge Massiah-Jackson was biased against law enforcement, that she was unduly lenient in sentencing career criminal offenders, and that she lacks proper judicial temperament, as shown with her use of profanity while sitting on the bench.

Despite attempts to investigate seriously these allegations, no one was willing to come forward publicly during the initial investigation with specific and credible evidence or information showing a general bias against law enforcement. In fact, Judge Massiah-Jackson, when confronted with this allegation, had denied having such a bias.

I was particularly troubled by a newspaper account reporting that Judge Massiah-Jackson had identified two undercover officers in open court and warned the spectators to watch out for them. No one, however, came forward to substantiate those charges.

But the committee's investigation did unearth some very troubling information. Judge Massiah-Jackson herself admitted to using profanity at least once while sitting as a judge—she admitted to cursing at a prosecutor in open court; it was not pleasant, and the profanity was not incidental profanity—but she expressed contrition about that event. Indeed, she promised the committee that, if confirmed, she would act appropriately as a Federal district judge.

Now, I take charges of intemperance from the bench seriously. Judges, by their very position, must remain above the fray. They must, by their demeanor and comportment, preside with dignity over their courtrooms and set an example for the attorneys and witnesses to follow. Nevertheless, as a former litigator, I know that in the rough and tumble world of courtroom advocacy that sometimes things can get a bit out of hand. That at least places such untoward remarks in some kind of context. Judge Massiah-Jackson assured the committee that she would conduct herself in an appropriate manner in the future, and that such mistakes as had occurred were early in her tenure on the bench and that she would never allow that to happen again.

The committee's investigation also confirmed that Judge Massiah-Jackson's sentences, while not grossly out of line with those imposed by other State judges, were indeed very lenient on average.

By the time the committee held a hearing on Judge Massiah-Jackson, it was clear to me that she had exercised questionable judgment in a number of cases, that she was softer on crime than I would wish a Federal judge to be, and that there were some serious questions about her ability to preside over a courtroom with the level of decorum that our citizens have the right to expect.

It was clear to me, in a word, that Judge Massiah-Jackson would never be my nominee to the Federal bench. But the Constitution does not vest judicial appointment authority in the Senate. She is President Clinton's nominee. I have never viewed my advise-and-consent responsibilities as an opportunity to second-guess whoever is the President—so long as he sends us nominees who are well qualified to serve and whose views, while perhaps not my own, reflect a commitment to uphold the Constitution and abide by the rule of law.

For that reason, I anticipated that the nominee's responses during her hearing would be extremely important to my own vote. To my mind, those responses would determine whether there was reason to expect that Judge Massiah-Jackson could yet be a credit to the Federal bench.

During her hearing, Judge Massiah-Jackson was questioned extensively about her sentencing record in various cases, she was asked about charges she was antiprossecution, and she was asked to explain the incident in which she had cursed at prosecutors.

After the hearing, members of the committee posed further questions in writing, to which she responded.

In a nutshell, Judge Massiah-Jackson again apologized for her use of profanity in the courtroom and she made every effort to persuade us she has the highest respect for law enforcement and for the difficult job that police officers have to do in our country.

Of particular significance to me, Judge Massiah-Jackson expressly disputed the published press report that indicated she had used her job as a State judge to expose the identities of undercover police officers—in open court, I might add—and to warn the spectators against them. In response to a written question from Senator THURMOND, she flatly denied that such an event had occurred.

On the faith of those assurances and the assurances of those who knew her and know her, and while reviewing the issue very closely, I voted with a majority of my colleagues to report her nomination favorably out of the committee.